

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF NEW MEXICO**

**UNITED STATES OF AMERICA,**

Plaintiff,

vs.

**No. CR 01-1186 LCS**

**JOSE I. MUNOZ,**

Defendant.

**MEMORANDUM OPINION AND ORDER**

**THIS MATTER** came before the Court for a hearing on Defendant's Notice of Intent to Raise Defense of Diminished Capacity (Doc.31), filed December 17, 2001. The Court finds that the defense of diminished capacity is unavailable in this case.

On November 16, 2001, Defendant was charged by Second Amended Information with three counts of violating 18 U.S.C. 111(a)(1) in Luna County. (Doc. 20.) Section 111(a)(1), provides in pertinent part:

Whoever forcibly assaults, resist, opposes, impeded, intimidates, or interferes with any person designated in section 1114 of this title while engaged in or on account of the performance of official duties . . . shall, where the acts in violation of this section constitute only simple assault, be fined under this title or imprisoned not more than one year, or both, and in all other cases, be fined under this title or imprisoned for not more than three years or both.

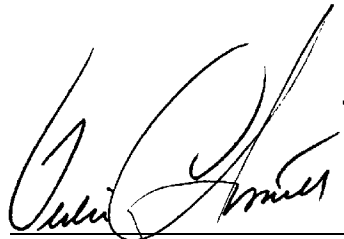
18 U.S.C. § 111(a)(1).

Specific intent is not an element of this offense. *United States v. Hill*, 526 F. 2d 1019, 1027 (10th Cir. 1975). The defense of diminished mental capacity is available only to negate the mens rea of a specific intent crime. *United States v. Jackson*, 248 F. 3d 1028, 1029 (10th Cir. 2001); *United*

*States v. Gonyea*, 140 F. 3d 649, 650 (6th Cir.1998); *United States v. Reed*, 991 F. 2d 399, 400 (7th Cir.1993); *United States v. Twine*, 853 F. 2d 676, 679 (9th Cir.1988); *United States v. Pohlott*, 827 F. 2d 889, 906 (3d Cir.1987). Section 111(a)(1) is not a specific intent crime. *United States v. Hill*, 526 F. 2d at 1027. Therefore, the defense of diminished capacity is not available to Defendant. The Court finds that this defense is unavailable for the crime charged.

**WHEREFORE,**

**IT IS ORDERED** that Defendant shall not be permitted to raise a defense of diminished capacity.

A handwritten signature in black ink, appearing to read 'Leslie C. Smith', is written over a horizontal line.

**LESLIE C. SMITH**  
**UNITED STATES MAGISTRATE JUDGE**